

FILED

MAR 21 2017

**Clerk, U.S. District Court
District of Montana
Missoula**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

MICHAEL MARTINDALE,

Plaintiff,

vs.

LEROY KIRKEGARD and MIKE
BATISTA,

Defendants.

CV 15-111-H-DLC-JTJ

ORDER

United States Magistrate Judge John Johnston entered his Findings and Recommendations in this matter on February 9, 2017, recommending dismissal of this matter pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. Plaintiff Michael Martindale ("Martindale") failed to timely object to the Findings and Recommendations, and so waived his right to de novo review of the record. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Having reviewed the Findings and Recommendations, the Court finds no clear error in Judge Johnston's finding that Martindale has failed to comply with previous Orders of this Court and his Complaint must be dismissed pursuant to Federal Rule of Civil Procedure 41(b) as a result. (*See* Docs. 24, 31, 34, 35.) Further, the Court notes that Judge Johnston has expressly warned Martindale that his case would be dismissed if he failed to respond to Court Orders or update his address. Because Martindale has failed to do either, this case will be dismissed.

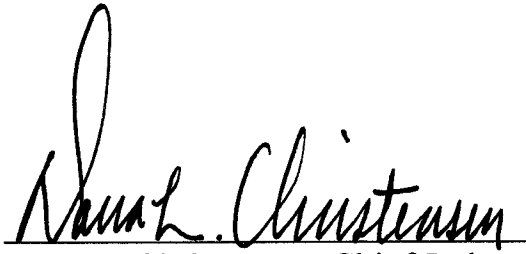
There being no clear error in Judge Johnston's Findings and Recommendations, IT IS ORDERED that:

(1) Judge Johnston's Findings and Recommendations (Doc. 37) are ADOPTED IN FULL.

(2) This matter is DISMISSED pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. The Clerk of Court is directed to close this matter, enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure, and terminate all pending motions.

(3) The Clerk of Court is directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good

Dated this 21st day of March, 2017.

A handwritten signature in black ink, reading "Dana L. Christensen", written over a horizontal line.

Dana L. Christensen, Chief Judge
United States District Court